the manager of the bill, if the gentleman would be so kind as to respond.

Mr. Speaker, I have had communication over the past weekend from court reporters of the Bankruptcy Court in the Los Angeles area who have expressed concern that they may have been, or may now be, omitted from coverage for retirement purposes under this bill. Some of them have been working for 25 or 30 years, I understand that the span is from 8 years to 40 years, in the Bankruptcy Courts and with the reorganization of the courts and the changes in the law they are quite anxious that their rights, if any, to retirement benefits and their jobs will be protected and that they will not be left out.

Would the gentleman explain whether or not the bill covers that situation?

Mr. EDWARDS of California. Mr. Speaker, will the gentleman from California yield?

Mr. DANIELSON. I am pleased to yield.

Mr. EDWARDS of California. This bill on page 103 in section 219 which actually begins on page 102 does deal with court reporters and it deals with them in an equitable way. It provides court reporters appointed or employed under this section shall be appointed or employed in accordance with all the standards and procedures applicable to appointments or employment under section 753 of this title. Here is the key phrase: "shall be governed by the rules and regulations applicable to court reporters appointed or employed under section 753 of this title."

What this means is that the reporters who are employed and those who will be employed in the future will be employed in the same way and be governed by the same rules and regulations applicable to court reporters in Federal district courts and other Federal courts. They are provided appropriate protection.

Mr. DANIELSON. Mr. Speaker, I thank the gentleman for that comment.

Is the gentleman able to say whether that means a reporter who is employed and has been for a period of time would not automatically be terminated and have to be rehired under some new rules?

Mr. EDWARDS of California. There is never a guarantee of that. However, what we did write into the bill was that these reporters who are already working for the bankruptcy judges, their employment will be subject to the applicable rules and regulations that the Federal district courts in general must comply with. That is a lot of protection but that is as far as we were able to go.

Mr. DANIELSON. Would I be safe in understanding that a reporter who has been employed for a period of years—I mean by that a tried, tested, and proven reporter who does a good job—can have a reasonable expectation of continuing his employment until his ordinary retirement years may come about?

Mr. EDWARDS of California. The gentleman from California is correct. There is nothing in the bill that would put such a court reporter in any kind of peril as long as he or she is doing a good job.

Mr. DANIELSON. The rule of reasonableness would apply then, would that be the idea?

Mr. EDWARDS of California. As usual, the gentleman is correct.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS) that the House suspend the rules and pass the Senate bill, S. 658, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid upon the table.

House Resolution 779 was laid on the table.

CLASSIFIED INFORMATION CRIMINAL TRIAL PROCEDURES ACT

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4736) to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4736

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Classified Information Criminal Trial Procedures Act."

TITLE I—PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION IN CRIMINAL CASES

PRETRIAL CONFERENCES

SEC. 101. At any time after the filing by the United States of an indictment or information in a United States district court, any party to the case may request a pretrial conference to consider matters relating to classifiel information that may arise in connection with the prosecution. Upon such a request, the court shall promptly hold a pretrial conference to establish a schedule for any request for discovery of classified information and for the implementation of the procedures established by this title. In addition, at such a pretrial conference the court may consider any other matter which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

PROCEDURES FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 102. (a)(1) Whenever a defendant in any Federal prosecution intends to take any action to disclose or cause the disclosure of classified information in any manner in connection with such prosecution, the defendant shall, before such disclosure and before the trial or any pretrial hearing, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized to do so by the court in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within ten days of receiving a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue that would otherwise be made during the trial or a pretrial hearing. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within ten days or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided.

(b)(1) Whenever a defendant in a Federal prosecution intends to take any action to disclose or cause the disclosure, during the trial or any pretrial hearing, of any classified information and the defendant has not given notice under subsection (a)(1) with respect to such disclosure because the interest of the defendant in such disclosure reasonably could not have been anticipated before the expiration of the time for giving such notice, the defendant shall, before taking such action, notify the court and the attorney for the United States of such intention and shall not disclose or cause the disclosure of such information unless authorized by the court to do so in accordance with this title. Such notice shall include a brief description of the classified information that is the subject of such notice.

(2)(A) Within forty-eight hours of the receipt of a notification under paragraph (1), the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of the classified information at issue. Upon such a request, the court shall conduct such a proceeding.

(B) Any proceeding held pursuant to a request under subparagraph (A) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(C) If a request for a proceeding under this subsection is not made within forty-eight hours or if, at the close of such a proceeding, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 108.

(c)(1) At any time before or during trial the United States, by written petition of the Attorney General, may request the court to conduct a proceeding to make all determinations concerning the use, relevance, or admissibility of classified information which

timely action on the bill we would have to postpone revisions in the controversial bankruptcy judge retirement area. At that time, however, the managers of the measure pledged themselves to tackling retirement pay in the near future, and the bill before us today fulfills that promise.

S. 658 represents a balanced, equitable approach to the retirement pay issue, and moves us in the direction we must move if we want to keep our experienced and seasoned bankruptcy judges on the benches. This legislation does not provide these judges with preferential treatment, but simply brings their handling up to par with that for our other judges. In fact, this bill adopts the retirement model very similar to the one we gave our approval to last week for claims court judges. Under current law, bankruptcy judges are not participants in the judicial retirement system, and to my mind there is no justification for this.

It is certainly true that bankruptcy judges began as administrative employees of the courts, but over the years, they have been called upon to assume a steadily expanding judicial role. In the 1960's, for all intents and purposes they became judges, although they retained the title of referee. Then, eventually and appropriately, the title was changed in keeping with the change effected in the bankruptcy judges' duties. Under the current code enacted in 1979, the administrative functions of the judges have been eliminated, and they are full-blown judges. It is time that, in terms of their retirement pay, they were treated as such.

It is also important to note that we have altered the fashion in which our bankruptcy judges are selected. Formerly, they were appointed by the district courts. Now they are named by the President. Since we have, in effect, required that our experienced judges change horses in midstream and modified their reasonable expectations, it only makes sense to provide them with the incentive to go on, in the form of improved retirement pay.

In closing, I believe this legislation has been revised since we last deliberated on it in ways which should make it acceptable to the vast majority of the Members of this House. It was endorsed by the Judicial Conference this spring, and has the support of our bankruptcy judges. I think it is high time we updated the retirement provisions for these judges in order to make them commensurate with the greater mantel of responsibility we have asked them to bear. I enthusiastically urge my colleagues to give their strong backing to this bill. Thank you, Mr. Speaker.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from California (Mr. EDWARDS) has done a thorough and a comprehensive review of Senate bill 658 which makes technical changes to the Bankruptcy Code.

Seven weeks ago I led the opposition to a similar motion to suspend the rules on this legislation because of my opposition to not only a pay raise for bankruptcy judges but also due to the fact that the bill under suspension of the rules at that time contained what I thought was an unconscionably large increase in pensions, not only for the judges who would be reappointed by the President in 1984 but also those judges who would not be reappointed by the President at that time.

Since then, the pension provisions have been worked out so that my objections have been met and I am pleased to support the motion to suspend the rules that have been given to the House today by the gentleman from California (Mr. EDWARDS).

I believe that the changes that have been made in the last 7 weeks go a long way to establishing a uniform pension system for article I judges so that judges of the bankruptcy court would not be under one pension system, judges of the Tax Court under a different pension system, and judges of the Court of Claims and other article I courts under a third pension system. Consequently, my objections to this motion have been met. I am pleased to support the motion of the gentleman from California (Mr. EDWARDS) and I would like to commend that gentleman for his efforts in working out these difficulties with the bill.

At this time I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I am pleased to note that the problem which caused this bill to be defeated on suspension once before has been rectified, and that we will have the opportunity today to bring this legislation one step closer to enactment.

I support S. 658 because I believe it makes positive improvements to the Bankruptcy Reform Act passed in 1978. As some of you know, the Reform Act created two principal methods of personal bankruptcy. First, it modernized the traditional straight bankruptcy under chapter 7. That is the mechanism most of us are familiar with: Add up your assets, subtract your liabilities and your exemptions, and distribute what is left, secured creditors first.

It also created an important repayment plan under chapter 13. In the long run, it is this chapter which, I believe, will prove to be a major boon to creditors. It is designed to permit a moderately salaried debtor, with few tangible assets other than his home or car, to pay back his creditors under a plan approved and supervised by the bankruptcy court.

Some of you, though, may be aware of problems which have developed with regard to the court's interpretation of the debtor's "good faith" in proposing his repayment plan. Since the act became effective a year ago, there have been several instances in which bankruptcy judges have given their approval to plans which offered the bare minimum to creditors—that is, an amount equal to what they would have received under straight bankruptcy in chapter 7. That was clearly not our intent when we considered the Bankruptcy Reform Act of 1978.

An amendment I offered in subcommittee is designed to encourage judges to look past the paper on which the plan is written in order to determine what constitutes "good faith." We clearly intend that all factors relating to the debtor's ability to pay—his salary level, the nature of his debts—will be considered before the repayment plan is approved.

Also, you should know that under chapter 13 as set forth in the 1978 act, debts involving students loans are dischargeable. This is not the case under chapter 7. This oversight has been rectified in S. 658 and student loans are no longer dischargeable under any provision of the bill.

If we fail to pass this legislation today, and are unable to bring it before the floor under a rule in this Congress, we will be forced to begin the process anew in the next Congress. In the meantime, token repayment plans, for example, as well as student loans, will continue to be handled in a manner inconsistent with the intent of Congress.

I urge you to support this bill—your constituencies will benefit far more from its prompt passage than from its defeat.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I was a member of the subcommittee which drafted the Bankruptcy Reform Act which guided its way to enactment in the last Congress. It was a huge piece of legislation—139 pages in length to be exact—and there have been many problems, despite the years of care in drafting and creating it. This technical amendments bill seeks to remedy many of the oversights and gaps which have become apparent since last October.

The Senate passed S. 658 a year ago, and the Judiciary Committee of the House has been sculpting its version ever since. An immense amount of time and thought has been invested in the creation of this bill; it has almost universal support among those who are impacted by it. Even those are dissatisfied with portions of it, or who did not have their particular concerns addressed, have indicated to me and to other members of the subcommittee that they would not like to see its movement held up.

The only problem which caused some concern involved the retirement system which this bill provides for bankruptcy judges. The concerns of my colleague from Wisconsin (Mr. SENSENBRENNER) have been met in this regard, and, though a rule has been obtained, I can see no reason why this legislation should be delayed any longer. I urge its favorable consideration.

Mr. EDWARDS of California. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I would like to ask a question of the gentleman from California (Mr. EDWARDS),

has not been the subject of notice under subsection (a)(1) or (b)(1). Upon such a request, the court shall conduct such a proceeding.

(2) Any proceeding held pursuant to a request under paragraph (1) (or any portion of such proceeding specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information.

(3) If, at the close of a proceeding held pursuant to this subsection, the determination of the court regarding the use, relevance, or admissibility of the classified information at issue is favorable to the defendant, the court, subject to the provisions of section 106, shall authorize the defendant to disclose or cause the disclosure of the classified information at the trial or at any pretrial hearing, but such disclosure may not be made before the time for the United States to appeal such determination under section 108 has expired. If the United States takes such an appeal, such disclosure may not be made until such appeal is decided. In any order of the court under this subsection that is favorable to the defendant, the court shall specify the time to be allowed the United States to appeal such order under section 108.

(d) Upon receiving a request from the United States for a proceeding under subsection (a)(2), (b)(2), or (c)(1), the court shall issue an order prohibiting the defendant from disclosing or causing the disclosure of the classified information at issue pending conclusion of the proceeding.

(e) Before any proceeding is conducted pursuant to a request by the United States under subsection (a)(2), (b)(2), or (c)(1), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant, the information may be described by generic category, in such fomr as the court may approve, rather than by identification of the specific information of concern to the United States.

(f) During the examination of a witness by a defendant in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible in accordance with the procedures established by this title. Upon such an objection, the court shall take such action to determine whether the response is admissible as will safeguard against the disclosure of any classified information. Such action may include requiring the United States to provide the court with a proffer of the response of the witness to the question or line of inquiry anticipated by the United States and requiring the defendant to provide the court with a proffer of the nature of the information sought to be elicited.

ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION

SEC. 103. (a) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by section 102, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(1) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(2) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(b) The United States may, in connection with a motion under subsection (a), submit to the court an affidavit of the Attorney General certifying that disclosure of the classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and ex parte.

SEALING OF RECORDS OF IN CAMERA PROCEEDINGS

SEC. 104. If at the close of an in camera proceeding under this title (or any portion of a proceeding under this title that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or any pretrial hearing, the record of such in camera proceeding shall be sealed and preserved by the court for use in the event of an appeal.

PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY DEFENDANT, RELIEF FOR DEFENDANT WHEN UNITED STATES OPPOSES DISCLOSURE

SEC. 105. (a) Whenever the court denies a motion by the United States that it issue an order under section 103(a) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue, the court shall order that the defendant not disclose or cause the disclosure of such information.

(b) Whenever a defendant is prevented by an order under subsection (a) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include—

(1) dismissing specified counts of the indictment or information;

(2) finding against the United States on any issue as to which the excluded classified information relates; or

(3) striking or precluding all or part of the testimony of a witness.

FAILURE OF DEFENDANT TO PROVIDE PRETRIAL NOTICE

SEC. 106. If a defendant fails to comply with the notice requirements of subsection (a) or (b) of section 102 and the court finds that the defendant's need to disclose or cause the disclosure of the classified information at issue reasonably could have been anticipated before the expiration of the time for giving such notice under such subsection, the court may prohibit the defendant from disclosing or causing the disclosure of such classified information during trial and may prohibit the examination by the defendant of any witness with respect to any such information.

RECIPROCITY; DISCLOSURE BY THE UNITED STATES OF REBUTTAL EVIDENCE

SEC. 107. (a) Whenever the court determines, in accordance with the procedures prescribed in section 102, that classified information may be disclosed in connection with a criminal trial or pretrial hearing or issues an order pursuant to section 103(a), the court shall—

(1) order the United States to provide the defendant with the information it expects to use to rebut the particular classified information at issue; and

(2) order the United States to provide the defendant with the name and address of any witness it expects to use to rebut the particular classified information at issue if, taking into account the nature and extent of the defendant's disclosures, the probability of harm to or intimidation or bribery of a witness, and the probability of identifiable harm to the national security, the court determines that such order is appropriate.

(b) If the United States fails to comply with an order under subsection (a), the court, unless it finds that the use at trial of information or a witness reasonably could not have been anticipated, may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

(c) Whenever the United States requests a pretrial proceeding under section 102, the United States, upon request of the defendant, shall provide the defendant with a bill of particulars as to the portions of the indictment or information which the defendant identifies as related to the classified information at issue in the pretrial proceeding. The bill of particulars shall be provided before such proceeding.

(d) The provisions of this section shall not apply to classified information provided by the United States to the defendant pursuant to a discovery request, unless the court determines that the interests of fairness so require.

APPEALS BY THE UNITED STATES

SEC. 108 (a) The United States may appeal to a court of appeals before or during trial from any decision or order of a district court in a criminal case requiring or authorizing the production, disclosure, or use of classified information, imposing sanctions for nondisclosure of classified information, or denying the issuance of a protective order sought by the United States to prevent the disclosure of classified information, if the Attorney General certifies to the district court that the appeal is not taken for purpose of delay.

(b)(1) If an appeal under this section is taken before the trial has begun, the appeal shall be taken within ten days after the date of the decision or order appealed from, and the trial shall not commence until the appeal is decided.

(2) If an appeal under this section is taken during the trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals (A) shall hear argument on such appeal within four days of the adjournment of the trial, (B) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (C) shall render its decision within four days of argument on appeal, and (D) may dispense with the issuance of a written opinion in rendering its decision.

(c) Any appeal and decision under this section shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

PROTECTIVE ORDERS; DISCOVERY; INTRODUCTION OF EVIDENCE

SEC. 109. (a) Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

(b) Whenever the court determines pursuant to rule 16 of the Federal Rules of Criminal Procedure that the defendant is entitled to discover or inspect documents or materials containing classified information, the court shall authorize the United States to delete classified information from the documents or materials to be made available to the defendant, to substitute a summary of the classified information, or to substitute a statement admitting relevant facts that the classified information would tend to prove, if the court finds that such action will provide the defendant with substantially the same ability to prepare for trial or make his defense as would disclosure of the specific classified information. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(c) Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(d) When a writing or recorded statement (or a part thereof) is introduced into evidence by the United States, the court, upon motion of the defendant, may require the United States at that time to introduce any other writing or recorded statement (or any other part of the statement introduced) which ought in fairness to be considered contemporaneously with the statement introduced and which is relevant to the defendant's case. If such other writing or recorded statement, or such other part, contains classified information, the court, at the request of the United States, shall conduct the hearing on the defendant's motion in camera. If, at the conclusion of such hearing, the court requires the United States to introduce classified information, the procedures of section 103 shall apply.

(e) The United States may notify the court and the defendant before trial if it intends to introduce during the trial only a part of a writing or recorded statement containing classified information. Upon such notification, the court shall conduct, before the trial, an in camera proceeding to make the determinations required by section 109 (d).

SECURITY PROCEDURES

SEC. 110. (a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General and the Director of Central Intelligence, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeals, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case involving classified information adopt procedures to protect against the unauthorized disclosure of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 111. In any prosecution in which the United States must establish as an element of the offense that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, at the time of the pretrial conference or, if no such conference is held, at a time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish such element of the offense.

FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED BY DEPUTY ATTORNEY GENERAL AND A DESIGNATED ASSISTANT ATTORNEY GENERAL

SEC. 112. The functions and duties of the Attorney General under this title may be exercised by the Deputy Attorney General and by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

DEFINITION

SEC. 113. As used in this title, the term "classified information" means information or material that is designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security or any Restricted Data, as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

TITLE II—GUIDELINES AND REPORTS

GUIDELINES PRESCRIBED BY THE ATTORNEY GENERAL

SEC. 201. Within ninety days of the date of the enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in deceding whether to prosecute a violation of Federal law in which there is a possibility that classified information will be disclosed. Such guidelines shall be promptly transmitted to the appropriate committees of the Congress.

ANNUAL REPORT TO CONGRESS BY THE ATTORNEY GENERAL

SEC. 202. The Attorney General shall report to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the chairmen and ranking minority members of the Committees on the Judiciary of the Senate and the House of Representatives once each year concerning the operation and effectiveness of this Act. Such report shall include summaries of those cases in which a decision not to prosecute or not to continue a prosecution was made because of the possibility that classified information would be disclosed.

TITLE III—EFFECTIVE DATE

SEC. 301. The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

□ 1430

The SPEAKER pro tempore. The gentleman from Kentucky (Mr. MAZZOLI) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from the Commonwealth of Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I move to suspend the rules and consider the bill (H.R. 4736) which responds to a phenomenon currently threatening both the fair administration of justice and the effective operation of our intelligence services.

The phenomenon has come to be called "graymail." Graymail occurs when the Government is prevented from initiating a prosecution or is forced to dismiss a pending prosecution because of its fear that the defendant will disclose or cause the disclosure of classified information during trial.

This phenomenon is not limited to espionage prosecutions. Graymail can also occur—indeed, it has occurred—in naroctics and murder trials, as well as in cases involving the prosecution of Government officials and businessmen.

In its worst extent graymail appears when a defendant threatens to disclose any and all classified information in his possession, whether or not it is related to the issues of the case. Graymail may also mean nothing more than that a defendant is exercising his legitimate rights to defend himself through the use of relevant and admissible classified information.

In either instance, however, the result may be the same: A criminal case is terminated prematurely, justice is not done, and public confidence in our posecutional authorities is lessened.

H.R. 4736 is intended to insure that classified information which bears no possible relationship to the issues in a criminal trial is not disclosed. It is also intended to insure that classified information that the relevant to the defendant's case will be identified prior to trial, before it is publicly revealed, so that the Government can make an informed decision in determining whether or not the benefits of prosecution will outweigh the harm stemming from public disclosure of such information.

The heart of the bill is its requirement that a criminal defendant notify the court and the Government before trial of any intention to disclose or cause the disclosure of classified information during trial. The Government may then obtain, prior to trial and in camera a ruling on the relevance or admissibility of the information and may take an interlocutory appeal from an adverse decision. It is to be emphasized that the bill does not alter the existing standards for determining relevance or admissibility.

In some instances, if the court makes the specific determination that to do so would provide the defendant with substantially the same ability to make his defense, the court may order that a specific item of classified information be replaced by a summary thereof or a stipulation to the facts such information tends to prove. The bill also requires the Government to provide the defendant with pretrial notice of the evidence it intends to use to rebut the information furnished in advance by the defendant.

Title II of the bill is directed at the preindictment stage of the criminal process. It is intended to insure that the executive branch has its own house in order and that the initial decisions on whether to seek an indictment in a case where classified information is likely to arise is made pursuant to established

criteria and after all the consequences of a decision have been carefully considered. Thus title II directs the Attorney General to promulgate guidelines to be used by the Department of Justice in deciding whether or not to prosecute a case in which there is a possibility that classified information will be disclosed. In addition, the Department of Justice must report annually to the Intelligence Committees on the operation of the act. The report must include summaries of those cases which were not pursued because of the possibility that classified information would be disclosed. The Judiciary Committee amendment, on which there is agreement, would extend this reporting to the chairmen and ranking minority members of the Judiciary Committees of both Houses.

Title III of the bill provides that the bill will become effective upon enactment, except that the new procedures shall not apply to any prosecution formally begun before the date of enactment.

Mr. Speaker, this bill was reported unanimously by both the Intelligence Committee and the Judiciary Committee. A similar bill was also reported unanimously by the Senate Judiciary Committee and passed the Senate without any opposing votes. The members and staff of these committees have spent many hours attempting to carefully craft this legislation so that, without impinging on the rights of criminal defendants, it will enable the Government to more effectively prove cases involving classified information. We have worked very closely with Senator BIDEN, Senator KENNEDY, and Assistant Attorney General Heymann and their able staffs, as well as with interested members of the Defense Bar and groups such as the ACLU and the American Bar Association.

I am proud to say that all these interested parties support the legislation, and I urge its adoption.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I rise in support of H.R. 4736, the Classified Information Criminal Trial Procedures Act. This legislation would provide a definitive structure to what is currently a chaotic and hazy situation when classified information becomes a matter of impartance in a criminal prosecution.

Mr. Speaker, the problem of graymail is presented when the Government must chose between dismissing a criminal prosecution or facing the possible court ordered disclosure at trial of sensitive, classified national security information. The major impediment to solving this problem is lack of clarity as to the legal relevance in a criminal trial of an individual piece of classified information. Sometimes a defendant will attempt to blackmail the Government into dismissing a case by threatening to disclose certain classified matters at trial. At other times, classified information is, indeed, relevant to a legitimate defense to a criminal charge, but the Government has no recourse to a legislative mechanism for ameliorating the Government's difficulty.

H.R. 4736 provides a well reasoned, delicately balanced solution to this extremely complex problem.

H.R. 4736 would establish a mechanism whereby legal issues in a criminal prosecution relating to classified information would for the most part be resolved prior to trial. Closed, in camera hearings would be held by the court, so that only those bits of evidence which the judge rules, in advance, to be relevant to the defense would be admissible. However, in order to provide reasonable flexibility for the defendant classified issues which he could not have anticipated prior to trial can be likewise dealt with on an in camera basis during the trial itself.

The net result of these procedures is to allow the Government certainty as to what classified information will have to be released at trial and thereby permit the Government to aggressively prosecute violations of the Federal criminal laws without having to endanger our national security.

Mr. Speaker, I urge the House to pass H.R. 4736.

Mr. Speaker, I am happy to yield such time as he may consume to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I thank my friend, the gentleman from Illinois, for yielding.

Mr. Speaker, just last week criminal trials began here in Washington for two high Government officials involved several years ago in Watergate: W. Mark Felt and Edward F. Miller Their superior, former FBI Director L. Patrick Grey, has yet to come to trial. The reason these trials have taken so long to commence is due in part to the continuing controversy over greymail.

Very simply, greymail has come to represent an attempt by a criminal defendant to delay prosecution or have charges against him dropped altogether as a result of his claim that he will seek disclosure of classified materials as part of the defense. Legislation designed to streamline this process has been bouncing around Congress for a number of years and a two-thirds vote today would go a long way to achieving enactment before the Congress closes its doors for this year.

The bill requires that a criminal defendant give notice of his intention to use classified material in his defense at trial. Having done this, the Government would be entitled to a private, in camera adversary proceeding before a Federal judge. Once this hearing has been concluded, the judge would then be empowered to either bar disclosure of the material or permit disclosure of some or all of it. If the Government is dissatisfied with the judge's decision, it may immediately take an interlocutory appeal to the appropriate appellate court.

This is a bill which has the support of both the Department of Justice, the FBI, and the ACLU. It is a bill which I have supported continuously since its introduction and which deserves passage.

During committee consideration, I joined my colleague from Virginia (Mr. BUTLER) in expressing my concern that certain provisions of the bill seemed to require that the Department of Justice file an annual report on its progress to both the Intelligence and the Judiciary Committees of the House and Senate. It was my feeling then, and I am pleased to say that the committee report now clarifies my concerns, that any reporting obligation should be limited to a statistical report on the progress of the bill and should address intself to no classified materials. It is my understanding that the chairman of the subcommittee, Mr. EDWARDS, agrees with this interpretation.

Mr. BUTLER is satisfied, as am I, and I therefore endorse this legislation and urge my colleagues to do likewise.

Mr. MAZZOLI. Mr. Speaker, I yield such time as he would desire to the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman from Kentucky for yielding.

First of all, I would like to complement the floor manager of this bill, the gentleman from Kentucky, and the other members of the House Permanent Select Committee on Intelligence on the excellent job they did in drafting this legislation. The Intelligence Committee spent months working closely with the Justice Department, the intelligence community, the defense bar, and other interested groups to develop legislation in this area.

In its own consideration of the legislation, it became immediately apparent to the Judiciary Committee that there was a remarkably broad range of support for the bill. That range of support I think indicates how well the Intelligence Committee balanced all of the competing interests at stake in this bill.

I do not always see eye to eye with my colleagues on the House Intelligence Committee, particularly in areas where fundamental constitutional rights could be affected. In this case, important sixth amendment rights of confrontation and compulsory process were closely entwined with virtually every aspect of this bill.

But the proper balance between the needs of national security and constitutional guarantees was struck by the Intelligence Committee. The unanimous vote in the Judiciary Committee is a further indication that this bill deserves the support of this body.

The bill is a lawyer-like response to a series of delicate legal problems. It is primarily a procedural bill. It does not attempt to alter substantive rights or to change the rules of evidence or criminal procedure. It is a workable solution to the graymail dilemma and as such I think deserves the support of the House.

● Mr. BOLAND. Mr. Speaker, I rise in strong support of H.R. 4736, the Classified Information Criminal Trial Procedures Act. It is a carefully crafted effective solution to the graymail problem which has burdened our criminal justice system for several years.

The gist of the problem is that there now exists no uniform procedural mechanism enabling the Government to determine, pretrial, what classified information will be disclosed during trial. Without such knowledge, a decision on whether to prosecute a case involving classified information is at best a guessing game and a decision not to prosecute—based on fear of the unknown—is the likely result.

H.R. 4736 will enable the Government to make an informed decision in such cases and result in both the better administration of justice and fewer unnecessary disclosures of classified information. These results will be achieved without impinging on the rights of criminal defendants.

The wide-ranging bipartisan support which H.R. 4736 commands is perhaps the best evidence that the problems it addresses are real and immediate and that the manner in which it addresses them is correct. The bill is supported by the CIA and the ACLU, by the Justice Department and the Center for National Security Studies. It has been endorsed by the American Bar Association. It was reported without a dissenting vote by both the Judiciary Committee and the Intelligence Committee.

Such a coalescence of support also attests to the skill and dedication brought to this endeavor by the members and staff of the Intelligence and Judiciary Committees, and those with whom they worked closely in the Senate and Department of Justice.

The gentleman from Kentucky (Mr. MAZZOLI) has worked particularly long and hard on this measure, as have the gentlemen from Illinois (Mr. MURPHY, Mr. MCCLORY, and Mr. HYDE), and the gentleman from California (Mr. EDWARDS). I commend them for their efforts and urge your support for this important legislation which is the product of their labors.●

□ 1440

Mr. MAZZOLI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky (Mr. MAZZOLI) that the House suspend the rules and pass the bill, H.R. 4736, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the Permanent Select Committee on Intelligence, be discharged from further consideration of the Senate bill (S. 1482) to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1482

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Classified Information Procedures Act".

DEFINITIONS

SEC. 1. (a) "Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 2014(y) of title 42, United States Code.

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

PRETRIAL CONFERENCE

SEC. 2. At any time after the filing of the indictment or information, any party may move for a pretrail conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrail conference the court may consider any other matters which relate to classified information or which may promote a fair and expeditious trial.

PROTECTIVE ORDERS

SEC. 3. Upon request of the Government, the court shall issue a protective order to guard against the compromise in connection with a prosecution by the United States of any classified material.

DISCLOSURE OF CLASSIFIED INFORMATION TO DEFENDANTS

SEC. 4. The court may authorize the Government to delete specified items of classified information from documents to be made available to the defendant, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The Government's motion requesting such authorization and materials submitted in support thereof shall, upon request of the Government, be considered by the court in camera and not disclosed to the defendant.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION

SEC. 5. (a) Notice by Defendant.—If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or where no time is specified within thirty days prior to trial, notify the attorney for the Government and the court in writing. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the Government and the court in writing as soon as possible thereafter. Such notice shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection until the Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the Government to appeal such determination under section 7 has expired or any appeal under section 7 by the Government is decided.

(b) FAILURE TO COMPLY.—If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION

SEC. 6. (a) MOTION FOR HEARING.—After the United States receives notification pursuant to section 5 or otherwise learns of any classified information that the defendant may disclose or cause to be disclosed at a trial or pretrial proceeding, the Government may, within the time specified by the court, move for a hearing concerning any such information. In connection with its motion, the Government may submit the classified information along with an explanation of the basis for the classification to the court for its examination in camera and shall provide the court with an affidavit of the Attorney General, the Deputy Attorney General, or a designated Assistant Attorney General certifying that the information is classified. The hearing, or specified portion thereof, shall be held in camera whenever the Government certifies that a public proceeding may result in the compromise of classified information.

(b) HEARING.—(1) Prior to the hearing, the Government shall provide the defendant with notice of the information that will be at issue. This notice shall identify the specific classified information that will be at issue whenever that information has previously been made available to the defendant in connection with the pretrial proceedings. The Government may describe the information by generic category approved by the Court rather than identifying the specific information of concern to the Government when the Government has not previously made the information available to the defendant in connection with the pretrial proceedings.

(2) Following a hearing, the court shall determine whether and the manner in which the information at issue may be used in a trial or pretrial proceeding. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the Government's motion under subsection (a) is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(4)(A) If the court determines that the information may not be disclosed or elicited at a pretrial or trial proceeding the record of the hearing shall be sealed and preserved by the Government in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(B) In lieu of authorizing disclosure of the specific classified information, the court shall, if it finds that the defendant's right to a fair trial will not be prejudiced, order—

(i) substitution of a statement admitting relevant facts that the specific classified information would tend to prove, or

(ii) substitution of a summary or portion of a specific classified information.

(C) If the court determines that these alternatives to full disclosure may not be used and the Government provides the court with an affidavit of the Attorney General, Deputy Attorney General, or designated Assistant Attorney General objecting to disclosure of the information, the court shall issue any order which is required in the interest of justice. Such an order may include, but need not be limited to an order—

(i) striking or precluding all or part of the testimony of a witness; or

(ii) declaring a mistrial; or

(iii) finding against the Government on any issue as to which the evidence relates; or

(iv) dismissing the action, with or without prejudice; or

(v) dismissing specified counts of the indictment against the defendant.

Any such order shall permit the Government to avoid the sanction for nondisclosure by agreeing to permit the defendant to disclose the information at the pertinent trial or pretrial proceeding. The Government may exercise its right to take an interlocutory appeal prior to determining whether to permit disclosure of any classified information.

(c) RECIPROCITY.—Whenever the court determines pursuant to subsection (b) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interest of fairness does not so require, order the Government to provide the defendant with the information it expects to use to rebut the classified information. The court may place the Government under a continuing duty to disclose such rebuttal information. If the Government fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the Government of any witnes with respect to such information.

INTERLOCUTORY APPEAL

SEC. 7. (a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case requiring the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (i) shall hear argument on such appeal within four days of the adjournment of the trial, (ii) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (ii) shall render its decision within four days of argument on appeal, and (iv) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

INTRODUCTION OF CLASSIFIED INFORMATION

SEC. 8. (a) CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) PRECAUTIONS BY COURT.—The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein.

(c) TAKING OF TESTIMONY.—During the examination of a witness in any criminal proceeding, the Government may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the Government to provide the court with a proffer of the witness' response to the question or line of inqury and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

SECURITY PROCEDURES TO SAFEGUARD AGAINST COMPROMISE OF CLASSIFIED INFORMATION DISCLOSED TO THE COURT

SEC. 9. (a) Within one hundred and twenty days following the date of enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe security procedures for protection against the compromise of classified information submitted to the Federal district courts, the courts of appeals, and the Supreme Court.

(b) Until such time as procedures are promulgated pursuant to subsection (a), the Federal courts shall in each case involving classified information adopt procedures to protect against the compromise of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 10. In any prosecution in which the Government must establish that material relates to the national defense or constitutes classified information, the Government shall notify the defendant, within the time specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

SEC. 11. Section 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

ATTORNEY GENERAL GUIDELINES

SEC. 12. (a) Within one hundred and eighty days of enactment of this law, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

(1) the intelligence information which the Department of Justice officials believe might be disclosed,

(2) the purpose for which the information might be disclosed,

(3) the probability that the information would be disclosed, and

(4) the possible consequences such disclosure would have on the national security.

(c) Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General or his designee shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives and the Select Committee on Intelligence of the United States Senate on all cases where a decision not to prosecute a violation of Federal law pursuant to subsection (a) has been made.

REPORTS TO CONGRESS

SEC. 13. The Attorney General shall deliver to appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

MOTION OFFERED BY MR. MAZZOLI

Mr. MAZZOLI. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAZZOLI moves to strike out all after the enacting clause of the Senate bill, S. 1482, and to insert in in lieu thereof the provisions of H.R. 4736, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An act to establish certain pretrial and trial procedures for the use of classified information in connection with Federal criminal cases, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 4736) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 1482

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill, S. 1482, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and without objection, appoints the following conferees: Messrs. BOLAND, MAZZOLI, EDWARDS of California, DRINAN, MCCLORY, and HYDE.

There was no objection.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

SAFE DRINKING WATER ACT AMENDMENTS

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8117) to amend the Safe Drinking Water Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 8117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 1416(b)(2) of the Public Health Service Act is amended by striking out "1981" in subparagraph (A)(i) thereof and substituting "1984" and by striking out "1983" in subparagraph (B)(i) thereof and substituting "1986".

SEC. 2. (a) Part C of title XIV of the Public Health Service Act is amended by adding the following at the end thereof:

"OPTIONAL DEMONSTRATION BY STATES RELATING TO OIL OR NATURAL GAS

"SEC. 1425. (a) For purposes of the Administrator's approval or disapproval under section 1422 of that portion of any State underground injection control program which relates to—

"(1) the underground injection of brine or other fluids which are brought to the surface

in connection with oil or natural gas production, or

"(2) any underground injection for the secondary of tertiary recovery of oil or natural gas,

in lieu of the showing required under subparagraph (A) of section 1422(b)(1) the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

"(b) If the Administrator revises or amends any requirement of a regulation under section 1421 relating to any aspect of the underground injection referred to in subsection (a), in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) has been made, in lieu of the showing required under section 1422(b)(1)(B) the State may demonstrate that, with respect to that aspect of such underground injection, the State porgram meets the requirements of subpargraph (A) through (D) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

"(c)(1) Section 1422(b)(3) shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

"(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 1422 in the same manner as provided in such subsection with respect to a determination described in such subsection.

"(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.".

(b) Section 1423(a)(1) of such Act is amended by inserting after "(within the meaning of section 1422(b)(3)" the following: "or section 1425(c)".

(c) Section 1433(c)(2) of title XIV of the Public Health Service Act is amended by inserting the following at the end thereof: "Such term includes, where applicable, a program which meets the requirement of section 1425.".

SEC. 3. Section 1421(d)(1) of the Public Health Service Act is amended by adding the following at the end thereof: "Such term does not include the underground injection of natural gas for purposes of storage.".

SEC. 4. (a) Section 1415 of the Public Health Service Act is amended by inserting the following section heading at the beginning of such section: "Variances".

(b) Section 1416(a)(2) of the Public Health Service Act is amended by inserting immediately after "requirement," the following: "or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,".

(c) Section 1421(b)(1)(A) of the Public Health Service Act is amended by striking out "effective three years after the date of the enactment of this title," and inserting in lieu thereof the following: "effective on the date on which the applicable underground injection control program takes effect,".

(d) Section 1443(b)(2) of the Public Health Service Act is amended by striking out the second and third sentences therein and inserting in lieu thereof the following: "No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 1421.".

SEC. 5. Section 1442 of title XIV of the Public Health Service Act is amended by inserting the following new subsection after subsection (d) and by redesignating subsection (e) as (f):

"(e) The Administrator is authorized to make grants to a public water system which is required, under State or local law, to meet standards relating to drinking water turbidity which are more stringent than the standards in effect pursuant to this title Such grants shall be used by the public water system for the development and demonstration (including construction and installation) of any water filtration system which will demonstrate a new or improved method of meeting such more stringent standards.".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROYHILL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. WAXMAN) will be recognized for 20 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Speaker, when the Safe Drinking Water Act was reauthorized last year, I pledged that the Subcommittee on Health and the Environment would conduct vigorous oversight over the act and recommend needed amendments. Since then, the subcommittee has held 5 days of oversight hearings, including field hearings in Chicago and Pittsburgh. The bill which comes before you today is the product of that oversight.

During our hearings, many difficult and important issues were raised. We do not purport to have thoroughly dealt with all those issues in the reported bill. Rather, we have confined ourselves to proposing amendments to the Safe Drinking Water Act that are needed right away to adjust deadlines, or to improve Federal-State coordination, or to modify program coverage. We intend to undertake further oversight over the act in the next Congress and study possible additional changes to the act.

Section 1 of the bill extends for 3 additional years the power of the States to grant temporary case-by-case exemptions from the interim primary drinking water regulations. Thirteen thousand six hundred systems—most of them serving fewer than 2,500 people—are estimated by the Environmental Protection Agency to be unable to comply with the interim standards by the current January 1, 1981, statutory deadline. In the great majority of cases, noncompliance has been caused by lack of adequate leadtime or financial resources to make needed improvements. The additional exemption period permitted by this bill will allow orderly planning of needed improvements and will permit exploration of all available funding sources, such as through the Small Business Administration and the Farmers Home Administration.

Under the bill, the States would set compliance deadlines for systems on an individual basis. We expect that these compliance dates will be set on the basis of appropriate engineering studies to determine the alternatives available to the particular system. We expect also that systems will be brought into compliance as soon as possible, as is required by the act. In granting exemptions and setting compliance dates, no distinction is intended to be made between privately—and publicly—owned systems.

Section 2 provides States with an alternative means for States to acquire primary enforcement responsibility for the control of underground injection related to the recovery and production of oil and natural gas.

At present, a State may obtain primary enforcement responsibility for controlling underground injection only by showing that its underground injection control program meets the requirements of EPA regulations. Representatives of States that regulate underground injection related to the recovery or production of oil or natural gas testified in oversight hearings that they already have programs that meet the requirements of the Safe Drinking Water Act and prevent the underground injection which endangers drinking water sources. The bill would allow those States to continue their programs, unencumbered by additional Federal requirements, if they can demonstrate that their programs meet the requirements of the act. A State that can make this demonstration would be considered to have primary enforcement responsibility the same as a State that has met EPA's regulations.

Section 3 deletes the underground storage of natural gas from the statutory definition of underground injection. Natural gas storage operators testified in oversight hearings that the mere possibility of Federal regulation would discourage needed expansion of gas storage facilities. Since there currently is no evidence that gas storage poses a risk to drinking water quality, we chose to delete gas storage from the underground injection control program.

Section 4 makes various needed technical amendments. Section 5 allows grants to be made to a public water system for the purpose of developing a water filtration system which will demonstrate a new or improved method of meeting State turbidity standards that are stricter than Federal standards. A technical change has been made in this sec-